

THE GEORGE WASHINGTON UNIVERSITY
Washington, D. C.

MINUTES OF A REGULAR MEETING
OF THE FACULTY SENATE HELD ON
DECEMBER 11, 1987, IN LISNER HALL
ROOM 603

The meeting was called to order by Vice President French at 2:12 p.m.

Present: Vice President French, Registrar Gaglione, Parliamentarian Schechter, Berkovich, Birnbaum, Burks, Clark, Deering, East, Fox, Garris, Grub, Kirsch, Levy, Liebowitz, Loeser, Lovett, Morgan, Paratore, Pierpont, Reeves, Robbins, Robinson, Schiff, Simons, A. Smith, G. Smith, Solomon, Tolchin, Vontress, Yezer, and Zubrow

Absent: President Elliott, Barron, Cibinic, Cohn, Elgart, and Shotel

APPROVAL OF MINUTES

The minutes of the Special Meeting of November 6, 1987, and the Regular Meeting of November 13, 1987, were approved as distributed.

RESOLUTIONS

On behalf of the Committee on the Judicial System and the Executive Committee, Professor George W. Smith moved the adoption of Resolution 87/4, "A Resolution for Adoption of Revised Code of Student Conduct." The motion was seconded. Professor Smith said that the proposed Code represented a distinct philosophical shift from the 1987 Code in that the students were still involved in the decision-making process, but that their roles had been slightly changed. The committee was of the view that the University had the right and the duty to protect the University community, and that that view was incorporated in the proposed new Code. Professor Smith then introduced the members of the Committee on the Judicial System who were present: Professors Martha A. Burns and Ormond A. Seavey; Students Paul J. Barkett and Suzanne L. Michaud.

Before proceeding with the discussion, Professor French called upon Dean Birnbaum who read the following statement for the record appearing in the School of Medicine and Health Sciences Bulletin (1987-1988), Regulations for M.D. Candidates, Section F. Evaluation of Professional Comportment (p.31): "(This policy has been reviewed by the University Board of Trustees and

established to accommodate the unique curriculum and degree requirements of the Medical Center. Unless the University Provost decides in a particular case to have the case processed under the University Guide to Students Rights and Responsibilities, all cases involving misconduct by M.D. candidates will be processed under these regulations.)" Dr. French said that it was the Chair's understanding that the actions taken today by the Senate did not in any way set aside that ruling by the Board of Trustees with regard to M.D. candidates.

In opening the discussion, Dr. French suggested that the Senate consider the revised Code paragraph-by-paragraph for discussion and action. Professor Zubrow asked the privilege of the floor for Professor Starrs, National Law Center, who wished to address the document in its entirety. Professor Starrs said that during the past ten years he had served as the University representative for students in the current disciplinary document and, therefore, had some knowledge of the ancestry and particular actions that had taken place during those years. In comparing the existing Code with the proposed new Code, he said that the latter contained some rather sweeping changes. For example, the position of the University representative and all the functions of that representative would be abolished and amalgamated into the Office of the Vice President for Student Affairs under new judicial functions. This change would mean a major departure from the present system which provided for student representation by lawyers or even non-lawyers for that matter. This revision would change the entire structure of the judicial system that could create serious problems. In his experience over the past ten years, Professor Starrs said that there have not been the calamities referred to in the commentary sections of the revision, and he questioned the need for all the drastic changes proposed in the new Code.

A discussion followed covering Paragraphs 1 through 8 of the revised Code. Amendments were moved by Professors Fox, Robbins, Levy, Morgan, Kirsch, Deering, Schiff, and Zubrow. Participating in the discussion of the amendments were Professors George Smith, Tolchin, Robinson, Yezer, Grub, Pierpont, Garriis, Schechter, Burns, Seavey, Starrs, Registrar Gaglione, Students Barkett and Michaud, Dean Hanson, and Mr. Weitzner, Assistant to the Dean for Judicial Affairs. Because of the late hour and other business to be taken up, the Senate deferred discussion of the remainder of the Code to the January or February Senate meeting. Professor Smith thanked the Senate for its comments and recommendations and the members of the Committee on the Judicial System for their work and attendance at the meeting. (Amendments adopted by the Senate are attached and made a part of these minutes.)

NOMINATIONS FOR ELECTION TO AN AD HOC COMMITTEE ON THE BUDGET

On behalf of the Executive Committee, Professor Robinson moved the nominations of the following for election to an Ad Hoc Committee on the Budget: Professor Arthur D. Kirsch, Department of Statistics; Professor Raymond L. Pickholtz, Department of Electrical Engineering and Computer Science; Professor Roger E. Schechter, National Law Center; Professor James E. Kee, Department of Public Administration; and Dean Norma M. Loeser, SGBA. The nominees were elected unanimously.

FACULTY REPORT FROM THE COMMITTEE ON COORDINATED PLANNING

Professor Eldridge, faculty representative from the Committee on Coordinated Planning, reported that the committee had spent the fall semester reviewing the plans of administrative units, and would be reviewing the plans of academic units in the spring semester. He emphasized that the committee's function was to coordinate the process of planning, not to engage in planning, per se. The problem now facing the committee was that there was no institution-wide plan into which the individual plans could be melded. He thought the Commission Report was not well-suited to be translated into an operational plan that could be coordinated with individual plans. While the whole notion of planning on an institution-wide basis was relatively new to this University, Professor Eldridge said that it was needed, and the talk about a budget committee that would look at the academic budget school-wide over a five-year period was a step in that direction. What he thought was lacking might be described as something like a "permanent secretariat" of the Commission for the Year 2000. Professor Eldridge said he was very comfortable with the level of planning that was going on in individual units, but uncomfortable with what he failed to see as a full-blown institution-wide plan. While coordination was absolutely needed, it was not a substitute for planning.

GENERAL BUSINESS

Professor Robinson moved the nomination for election of Rita K. Ives, Professor of Special Education, to the Dispute Resolution Committee for the Spring Term 1988, as a replacement for Associate Professor Joan R. Regnell, who would be on sabbatical leave. The nomination was approved.

REPORT OF THE EXECUTIVE COMMITTEE

On behalf of the Executive Committee, Professor Robinson reported on three items. First, the Hearing Committee in the Lewicki grievance had issued a pre-hearing opinion and discovery order. Second, the review of the Mission and Directions Statements by Senate Committees was almost completed. The Executive Committee would put the entire report together as a

general statement from the Senate and then submit it to the Senate for recommendations and approval. It was anticipated that a statement from the Executive Committee concerning the entire planning process would be submitted with recommendations and commentary which would be separate from the response to the Mission and Directions Statements. Third, the Senate's invitation to senior members of the administration to meet with the Senate regarding the 1987-88 budget had been accepted for the January meeting. The procedure, suggested by the Executive Committee and agreed to by the administration, would be the submission of written questions by Senate members to the Executive Committee; those questions would then be forwarded, along with the Executive Committee's questions, to the administration and President Elliott. Questions should be submitted to the Executive Committee by December 18th, the next meeting of the committee.

Professor Robinson then wished everyone a very happy holiday season and a healthy and happy new year.

Professor Grub inquired whether the Senate would be precluded from asking follow-up questions at the January meeting. Professor Robinson directed the question to Vice President French who responded that the spirit of the plan would not preclude such questions.

BRIEF STATEMENTS

Professor Kirsch reported that the Special Committee on Mandatory Retirement had submitted an interim report to the Executive Committee. He hoped to have this report on the agenda for the January Senate meeting.

ADJOURNMENT

Upon a motion made and seconded, the meeting was adjourned by Vice President French at 4:17 p.m.



J. Matthew Gaglione
Secretary

THE FOLLOWING AMENDMENTS WERE ADOPTED BY THE FACULTY SENATE AT ITS DECEMBER 11, 1987, MEETING TO PARAGRAPHS 1 THROUGH 8 OF THE REVISED CODE OF STUDENT CONDUCT (underlining indicates new language).

Authority for Student Discipline

Par. 1. p.1 (line 3) "authority may be delegated to University Administrators, faculty members," etc.

Definitions

Par. 3.d) p.2 (line 3) "graduate and professional schools and colleges, divisions, and programs."

Par. 3.g) p.2 (line 1) "the term 'student' means any currently enrolled person for whom the"
(line 4) "and related regulations, and alumni auditors."

Par. 3.i) p.2 Held for further discussion.

Interpretation of Regulations

Par. 4. p.2 (line 2) "give students ~~general~~ notice of prohibited behavior."
(line 4) "statute, ~~and is to be read broadly~~."

Inherent Authority

Par.5. p.3 (line 5) "~~off-campus~~ University premises indicates that they pose a danger to others."

Par. 5. p.3 Commentary Held for further discussion.

Violations of Law and Disciplinary Regulations

Par. 6. p.3 Subpar. 1
(line 4) "~~will normally proceed during the pendency of criminal~~"
(line 5) "~~proceedings and~~ will not be subject to challenge on the"

Par. 6. p.3 Subpar. 2 Deleted in its entirety.

Interim Suspension

Par. 7. p.4 "The Vice President for Student Affairs or a designee may ~~suspend~~ evict from the University housing and/or, with the concurrence of the Vice President for Academic Affairs or a designee, evict ~~from University housing~~ suspend a student from the University for an interim period not to exceed 21 days, pending disciplinary proceedings," etc.

Par.8. p.4 (line 3) "President for Student Affairs or a designee and Vice President for Academic Affairs or a designee, within five"

A RESOLUTION FOR ADOPTION OF REVISED CODE OF STUDENT CONDUCT (87/4)

WHEREAS, The Code of Student Conduct was written in a time of student unrest, dissension, and general dissatisfaction on college campuses; and

WHEREAS, The current Code is unnecessarily cumbersome and overly legalistic; and

WHEREAS, Because of its cumbersome nature, the Code is frequently ignored or not followed as precisely as required; and

WHEREAS, There is a need to revise the Code to make it more reflective of the current disciplinary processes and procedures; and

WHEREAS, The proposed Code is a product of a year-long effort involving students, faculty, and staff; and

WHEREAS, The proposed Code better protects the interest of all members of the University; NOW, THEREFORE

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:

That the new Code of Student Conduct prepared by the Committee on the Judicial System be adopted by the University.

Committee on the Judicial System and
Executive Committee of the Faculty Senate
November 20, 1987

Deferred 12/11/87 to January or February, 1988, Senate meeting

THE GEORGE WASHINGTON UNIVERSITY
Washington, D. C.

The Faculty Senate

November 30, 1987

The Faculty Senate will meet on Friday, December 11, 1987, at 2:10 p.m., in Lisner Hall 603.

AGENDA

1. Call to Order
2. Approval of the minutes of the Special Meeting of November 6, 1987, and the Regular Meeting of November 13, 1987
3. Resolutions:

A RESOLUTION FOR ADOPTION OF REVISED CODE OF STUDENT CONDUCT (87/4); Professor George W. Smith, Chairman of the Committee on the Judicial System and member of the Executive Committee (Resolution 87/4 is attached with proposed Code of Student Conduct; Report of the Committee on the Judicial System has been distributed to Faculty Senate members because it is too lengthy to be distributed to the faculty-as-a-whole; copies are on reserve in Gelman Library)

4. Nomination by the Executive Committee for appointment to an Ad Hoc Committee on the Budget (nominations to be made):
5. Report by a faculty representative from the Committee on Coordinated Planning
6. General Business:
 - (a) Nomination for election of replacement for Associate Professor Joan R. Regnell (Sabb. Spring '88) to the Dispute Resolution Committee for the Spring Term 1988 (to be nominated)
 - (b) Report of the Executive Committee: Professor Lilien F. Robinson, Chairman
7. Brief Statements
8. Adjournment



J. Matthew Gaglione
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Committee on the Judicial System and
Executive Committee of the Faculty Senate
November 20, 1987

THE GEORGE WASHINGTON UNIVERSITY
CODE OF STUDENT CONDUCT

Authority for Student Discipline

1. Ultimate authority for student discipline is vested in the Board of Trustees by the University Charter. Disciplinary authority may be delegated to University administrators, committees, and organizations, as set forth in this Code, or in other appropriate policies, rules, or regulations adopted by the Board. Students are asked to assume positions of responsibility in the University judicial system in order that they might contribute their skills and insights to the resolution of disciplinary cases.

Rationale

2. The primary purpose for the imposition of discipline in the university setting is to protect the campus community. Consistent with that purpose, reasonable efforts will also be made to foster the personal, educational, and social development of those students who are held accountable for violations of University regulations.

Commentary

The University must commit its policies and procedures first of all to protect and promote the academic enterprise. Consequently, it may be necessary to suspend or expel students who have been found responsible for violations of this Code, or who otherwise pose a substantial danger to the campus community.

Any punishment imposed in accordance with this Code may also have the value of discouraging the offender and others from engaging in future misbehavior. In cases of minor disciplinary violations, the particular form of punishment may be designed to draw upon the educational resources of the University in order to bring about a lasting and reasoned change in behavior. However, the underlying rationale for punishment need not rest on deterrence or "reform" alone. A just punishment may also be imposed because it is deserved and because punishment for willful offenses affirms the autonomy and integrity of the offender.

Definitions

3. When used in this Code:
 - a) the term "aggravated violation" means a violation which resulted or foreseeably could have resulted in significant damage to persons or property or which otherwise posed a substantial threat to the stability

and continuance of normal University or University sponsored activities.

- b) the term "distribution" means any form of sale, exchange or transfer.
- c) the term "group" means a number of persons who are associated with each other but who have not complied with University requirements for registration as an organization.
- d) the terms "institution" and "University" mean The George Washington University and all of its undergraduate, graduate and professional schools and colleges.
- e) the term "organization" means a number of persons who have complied with University requirements for registration.
- f) the term "reckless" means conduct which one should reasonably be expected to know would create a substantial risk of harm to persons or property or which would otherwise be likely to result in interference with normal University or University sponsored activities.
- g) the term "student" means any person for whom the institution maintains educational records, as defined by the Family Educational Rights and Privacy Act of 1974, and related regulations.
- h) the term "University premises" means buildings or grounds owned, leased, operated, controlled or supervised by the University.
- i) the term "weapon" means any object or substance designed to inflict a wound, cause injury, or incapacitate, including, but not limited to, all firearms, pellet guns, switchblade knives, knives with blades five or more inches in length, and chemicals such as "Mace" or tear-gas.
- j) the term "University sponsored activity" means any activity on or off campus which is initiated, aided, authorized, or supervised by the University.
- k) the terms "will" or "shall" are used in the imperative sense.

Interpretation of Regulations

- 4. The purpose of publishing disciplinary regulations is to give students general notice of prohibited behavior. This Code is not written with the specificity of a criminal statute, and is to be read broadly.

Inherent Authority

5. The University reserves the right to take necessary and appropriate action to protect the safety and well being of the campus community. Such action may include taking disciplinary action against those students whose behavior off-campus indicates that they pose a danger to others.

Commentary

The University will not routinely invoke the disciplinary process for student misbehavior occurring off-campus. Nonetheless, it will be necessary to endeavor to protect the campus community when there are reasonable grounds to believe that a student may pose a substantial danger to others. Normally, such "substantial danger" will be manifested by a pending criminal charge, usually relating to a crime of violence, burglary, substantial theft or fraud, the sale of illegal drugs, or the possession of substantial quantities of illegal drugs.

While a criminal charge does not mean that the student is guilty of an offense, such a charge does mean that civil authorities have determined that there is at least probable cause to believe that an offense was committed, and that the student committed it. Under these circumstances it may be necessary and appropriate to conduct a disciplinary hearing. It is also important to understand that the interests of the University are not necessarily protected when bail is set before trial. This is so because bail determinations are frequently limited to the issue of the defendant's likely appearance in subsequent criminal proceedings. Those proceedings are often subject to extensive delays, which may require the University to act promptly in order to protect the campus community.

Violations of Law and Disciplinary Regulations

6. Students may be accountable to both civil authorities and to the University for acts which constitute violations of law and of this Code. Disciplinary action at the University will normally proceed during the pendency of criminal proceedings and will not be subject to challenge on the ground that criminal charges involving the same incident have been dismissed or reduced.

Respondents in disciplinary proceedings may be directed to answer questions concerning their conduct. Students who refuse to answer may be informed that the hearing panel could draw negative inferences from their refusal which might result in their suspension or expulsion from the University, or in eviction from University housing.

Interim Suspension

7. The Vice President for Student Affairs or a designee may suspend from the University and/or evict from University housing a student for an interim period not to exceed 21 days, pending disciplinary proceedings or medical evaluation. The interim suspension shall become immediately effective without prior notice whenever there is evidence that the continued presence of the student on the campus poses a substantial threat to himself or to others or to the stability and continuance of normal University functions.
8. A student suspended or evicted on an interim basis shall be given an opportunity to appear personally before the Vice President for Student Affairs or a designee within five business days from the effective date of the interim suspension or eviction in order to discuss the following issues only:
 - a) the reliability of the information concerning the student's conduct, including the matter of his or her identity;
 - b) whether the conduct and surrounding circumstances reasonably indicate that the continued presence of the student on the University campus poses a substantial threat to himself or herself or to others or the stability and continuance of normal University functions.

Standards of Classroom Behavior

9. The primary responsibility for managing the classroom environment rests with the faculty. Students who engage in any prohibited or unlawful acts which result in disruption of a class may be directed by the faculty member to leave the class for the remainder of the class period. Longer suspensions from a class, or dismissal on disciplinary grounds, must be proceeded by a disciplinary conference or hearing, as set forth in Parts 29 and 30 of this Code, or in accordance with Parts 7 and 8.

Commentary

The term "prohibited...acts" would include behavior prohibited by the teacher (e.g. smoking in the classroom, persistently speaking without being called upon, refusing to be seated, disrupting the class by leaving and entering the room without authorization, etc.). It must be emphasized that this provision is not designed to be used as a means to punish classroom dissent. The lawful expression of a disagreement with the teacher is not in itself "disruptive" behavior.

Office of Judicial Affairs

10. The Office of Judicial Affairs directs the efforts of students and staff members in matters involving student discipline. The responsibilities of the Office include:

- a) determination of the disciplinary charges to be filed pursuant to this Code.
- b) interviewing, advising, and assisting parties involved in disciplinary proceedings, and arranging for a balanced presentation before the various judicial boards.
- c) training and advising the campus judiciary.
- d) maintenance of all student disciplinary records.
- e) development of procedures for conflict resolution.
- f) resolution of cases of student misconduct, as specified in Part 29 of this Code.
- g) collection and dissemination of research and analysis concerning student conduct.
- h) submission of a report each semester to the campus community, reporting the number of cases referred to the office, the number of cases resulting in disciplinary action, and the range of sanctions imposed.

Prohibited Conduct

11. The following misconduct is subject to disciplinary action:

- a) intentionally or recklessly endangering, threatening, or causing physical harm to any person on University premises or at University sponsored activities, or intentionally or recklessly causing reasonable apprehension of such harm.
- b) unauthorized use, possession or storage of any weapon or explosive on University premises or at University sponsored activities whether or not a federal or state license to possess the same has been issued to the possessor.
- c) intentionally initiating or causing to be initiated any false report, warning or threat of fire, explosion or other emergency on University premises or at University sponsored activities.

- d) intentionally or recklessly interfering with normal University or University sponsored activities, including but not limited to, studying, teaching, research, University administration, or fire, police or emergency services.
- e) knowingly violating the terms of any disciplinary sanction imposed in accordance with this Code.
- f) intentionally furnishing false information to the University.
- g) unauthorized distribution or possession for the purpose of distribution of any controlled substance or illegal drug on University premises or at University sponsored activities.
- h) forgery, unauthorized alteration, or unauthorized use of any University document or instrument of identification.
- i) intentionally or recklessly misusing or damaging fire safety equipment.
- j) intentionally and substantially interfering with the freedom of expression of others on University premises or at University sponsored activities.
- k) theft of property or of services on University premises or at University sponsored activities; knowing possession of stolen property on University premises or at University sponsored activities.
- l) use or possession of any controlled substance or illegal drug on University premises or at University sponsored activities.
- m) intentionally or recklessly destroying or damaging University property or the property of others on University premises or at University sponsored activities.
- n) failure to comply with the directions of University officials, including campus security officers, acting in performance of their duties.
- o) violations of other published University regulations or policies, available in the Office of the Vice President for Student Affairs. Such regulations or policies may include the residence hall occupancy agreement, as well as those regulations relating to entry and use of University facilities, sale or consumption of alcoholic beverages, use of amplifying equipment, campus demonstrations, parking office rules and regulations, and regulations governing student organizations.

- p) unauthorized use or possession of fireworks on University premises.

Sanctions

- 12. a) Warning: notice, orally or in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.
 - b) Censure: a written reprimand for violation of specified regulations, including a warning that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.
 - c) Disciplinary Probation: exclusion from participation in privileged or extra-curricular institutional activities for a specified period of time. Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation, or any other violation of this Code during the period of probation, will normally result in suspension or expulsion from the University.
 - d) Restitution: repayment to the University or to an affected party for damages resulting from a violation of this Code.
 - e) Suspension: exclusion from classes, and other privileges or activities as set forth in the notice for a definite period of time not to exceed two years.
 - f) Expulsion: termination of student status and exclusion from University privileges and activities for an indefinite period of time, or permanently, as set forth in the notice. Conditions of readmission, if any, shall be stated in the expulsion notice.
 - g) Other sanctions: other sanctions may be imposed instead of or in addition to those specified in sections (a) through (f) of this part. For example, students may be subject to eviction from University housing for disciplinary violations which occur in the residence halls. Likewise, students may be subject to restrictions upon or denials of University parking privileges for violations involving the use or registration of motor vehicles on campus. Service or research projects may also be assigned.
- 13. Violations of Part 11 (a) through (h) of this Code may result in expulsion from the University. Violations of Part 11 (i) through (l) of this Code may result in suspension from the University. Significant mitigating factors shall be considered, which may include the present demeanor and past disciplinary record of the offender, as well as the nature of the offense and the severity of any damage, injury or harm resulting from it.

14. Repeated or aggravated violations of any Part of this Code may also result in expulsion or suspension or any other sanction that may be appropriate.

Commentary

Parts 13 and 14 represent an attempt to give needed assistance to those who are assessing sanctions. The direction of the guidance is toward imposition of more severe disciplinary sanctions in serious cases. However, the language concerning "mitigating factors" is broad enough to give considerable leeway to do justice, depending upon the facts in each case. The burden of establishing the facts in mitigation should, of course, be upon the respondent.

15. Attempts to commit acts prohibited by this Code shall be punished to the same extent as completed violations.

Standards Of Due Process

16. Students subject to suspension or expulsion from the University will be entitled to a judicial board hearing, as provided at Part 30 of this Code. Students subject to eviction from University housing will be entitled to a judicial board hearing, as provided at Parts 18 and 30 of this Code. Students subject to any other sanction will be entitled to an informal conference, as set forth in Parts 19 and 29 of this Code.
17. The focus of inquiry in disciplinary proceedings shall be the guilt or innocence of those accused of violating disciplinary regulations. Formal rules of evidence shall not be applicable, nor shall deviations from the prescribed procedures necessarily invalidate a decision or proceeding, unless significant prejudice to a student respondent or the University may result.

Discipline in the Residence Halls

18. Students accused of acts within the residence halls which would constitute a violation of this Code, or of the residence hall occupancy agreement, will be referred for a hearing before the University Hearing Board, if the violation in question might result in eviction from housing, or suspension or expulsion from the University. The recommended findings and sanctions, if any, prepared by the University Hearing Board will be forwarded to the Director of Housing and Residence Life and to the Vice-President for Student Affairs, or a designee. Determination of Student housing status will be made by the Director of Housing and Residence Life. All other disciplinary determinations will be made by the Vice-President for Student Affairs, or a designee.

19. Students subject to lesser sanctions for acts within the residence halls which would constitute a violation of this Code, or of the residence hall occupancy agreement, will be referred for a disciplinary conference in the Office of Housing and Residence Life, or a designee, in accordance with Part 29. Prompt reports of case outcomes shall be forwarded to the Director, Office of Judicial Affairs.
20. Removal from housing for failure to pay housing fees, assessments, or charges, does not constitute disciplinary action, and does not fall under the purview of this Code.

Case Referrals

21. Any person may refer a student or a student group or organization suspected of violating this Code to the Director, Office of Judicial Affairs. Allegations of violations occurring within residence halls should be referred to the Director of Housing and Residence Life, or a designee. Those referring cases are normally expected to serve as the complainant, and to present relevant evidence in disciplinary hearings or conferences. The Director, Office of Judicial Affairs, may appoint a member of the campus community to serve as an advisor to the complainant. The role of the advisor shall be limited to consultation with the complainant.

Commentary

Several measures in the Code are designed to restore balance in disciplinary proceedings, even in those cases in which the complainant is inexperienced with administrative adjudication:

- a) a hearing officer may be appointed in complex or serious cases. See Part 30 (o).
- b) the role of attorneys and advisors is restricted. See Part 31 and Commentary.
- c) the "disciplinary conference" procedure is designed to eliminate adversary proceedings in minor cases. See Part 29 and Commentary.

Hearing Referrals

22. The Director, Office of Judicial Affairs, and the Director of Housing and Residence Life, in accordance with part 21, will review appropriate case referrals to determine whether the alleged misconduct might result in expulsion or suspension from the University or eviction from housing. Students subject to those sanctions will be entitled to a hearing before the University Hearing Board. All other cases will be resolved after an informal disciplinary conference, as set forth in Part 29 of this Code.

23. Students referred for a hearing before the University Hearing Board may elect instead to have their cases resolved in accordance with Part 29 of this Code. The full range of sanctions may be imposed, including suspension or expulsion from the University, although the right of appeal as set forth in Parts 36-42 shall not be applicable.
24. The Director, Office of Judicial Affairs, or a designee, may defer disciplinary proceedings for alleged violations of this Code for a period not to exceed ninety days. Pending charges may be withdrawn thereafter, dependent upon the conduct of the respondent.

Judicial Boards

25. Hearings or other proceedings as provided in this Code may be held before the following boards or committees:
 - a) The Student Traffic Board considers offenses for which a ticket was issued by the Parking Office, as well as adjudications of other parking matters referred by the University Parking Committee. It may both impose and reduce prescribed fines or suspensions of parking privileges. The Board is composed of five students, all of whom must be registered for parking during their term of office. Traffic Board decisions are subject to administrative review, in the discretion of the Director, Office of Judicial Affairs, but are otherwise considered final and conclusive.
 - b) The University Hearing Board hears all cases resolved in accordance with Part 30 of this Code. The Board is composed of a pool of ten members, nine full-time students and one full-time member of the faculty. At least five of the nine student members must be residents in University housing. Five members shall be selected by the Director, Office of Judicial Affairs, to hear each case. A presiding officer shall be appointed, who will participate in and preside over all hearings.
 - c) Ad Hoc Boards may be appointed by the Director, Office of Judicial Affairs whenever any board is not constituted, is unable to obtain a quorum, or is otherwise unable to hear a case. Ad hoc boards may be composed of administrators, faculty members, students, or any combination thereof. Reasonable efforts should be made to arrange for student membership on any ad hoc board.
26. Except as provided in Part 25 (a) of this Code, the decisions of each judicial board shall be regarded as a recommendation to the Vice-President for Student Affairs, or a designee.

Selection and Removal of Board Members

27. Members of each judicial board and the presiding officer are selected in accordance with procedures developed by the Vice-President for Student Affairs, or a designee.
28. Members of any judicial board who are charged with any violation of this Code or with a criminal offense may be suspended from their judicial positions by the Vice-President for Student Affairs, or a designee, during the pendency of the charges against them. Members convicted of any such violation or offense may be disqualified from any further participation in the University judicial system by the Vice-President for Student Affairs, or a designee. Additional grounds and procedures for removal may be established by the Director, Office of Judicial Affairs.

Procedure - Disciplinary Conferences

29. Students accused of offenses which may result in penalties less than expulsion or suspension from the University or eviction from housing are subject to a disciplinary conference in the Office of Judicial Affairs, or in the Office of Housing and Residence Life as provided in Part 19. The following procedural protections are provided to respondents in disciplinary conferences:
 - a) written notice of the specific charges at least three days prior to the scheduled conference.
 - b) reasonable access to the case file prior to and during the conference. The case file consists of materials which would be considered "educational records," pursuant to the Family Educational Rights and Privacy Act of 1974; personal notes of University staff members or complainants are not included.
 - c) an opportunity to respond to the evidence and to call appropriate and relevant witnesses.
 - d) a right to an advisor, only if applicable under Part 31.

Commentary

The conference procedure is designed to reduce unnecessary proceduralism and contentiousness in disciplinary proceedings. A disciplinary conference will normally consist of an informal, non-adversarial meeting between the respondent and a University administrator, or an experienced member of the University Hearing Board, as designated by the Director, Office of Judicial Affairs. Complainants would not be required to participate, unless cross-examination was necessary to resolve a dispositive

factual issue. Documentary evidence and written statements could be relied upon, so long as the respondent was given access to them in advance, and allowed to respond to them at the conference. Respondents would also be allowed to call appropriate and relevant witnesses.

Procedures comparable to the disciplinary conference (referred to as "structured conversations") are suggested by David L. Kirp in his 1976 Stanford Law Review article "Proceduralism and Bureaucracy: Due Process in the School Setting," 28 Stanford Law Review 841:

The benefits of such conversations in the school setting may better be appreciated by contrasting them with the typical due process hearing. Hearings are designed to determine the facts of a particular controversy, and apply predetermined rules to the facts thus found. At that point, the function of the hearing is at an end. The wisdom of the underlying substantive rules has no relevance, nor is broader discussion of grievances generally encouraged, unless it is somehow pertinent to the dispute at hand.

Conversation knows no such limits. It too serves as a vehicle for resolving what are likely to be factually uncomplicated disputes, but it does more than that. It enables students to feel that they are being listened to and may encourage them to raise underlying grievances. It provides administrators with a relatively inexpensive vehicle for monitoring, and hence a basis for reshaping institutional relationships. The outcome of these 'orderly thoughtful conversations' may well be decisions different in their particulars from what might otherwise have been anticipated; repeated conversations which touch upon similar student grievances may ultimately lead disciplinarians to reassess whether control is so vital, and collaboration so improbable, as a means of assuring institutional order.

Procedure - Disciplinary Hearings

30. The following procedural guidelines shall be applicable in disciplinary hearings:
 - a) respondents shall be given notice of the hearing date and the specific charges against them at least five days in advance and shall be accorded reasonable access to the case file, which will be retained in the Office of Judicial Affairs.
 - b) the presiding officer may subpoena witnesses upon the motion of any board member or of either party and shall subpoena witnesses upon request of the Director, Office of Judicial Affairs. Subpoenas must be approved by the

Director, Office of Judicial Affairs and shall be personally delivered or sent by certified mail, return receipt requested. University students and employees are expected to comply with subpoenas issued pursuant to this procedure, unless compliance would result in significant and unavoidable personal hardship, or substantial interference with normal University activities.

- c) respondents who fail to appear after proper notice will be deemed to have pled guilty to the charges pending against them. Nonetheless, the complainant will be required to present a prima facie case.
- d) hearings will be closed to the public, unless the respondent requests the presence of an advisor, who may be an attorney, in accordance with Part 31. A public hearing may be held, in the discretion of the presiding officer, if requested by the respondent.
- e) the presiding officer shall exercise control over the proceedings to avoid needless consumption of time and to achieve orderly completion of the hearing. Any person, including the respondent, who disrupts a hearing may be excluded by the presiding officer or by the Director, Office of Judicial Affairs.
- f) hearings shall be tape recorded or transcribed.
- g) any party may challenge a board member on the grounds of personal bias. Board members may be disqualified by the Director, Office of Judicial Affairs or upon majority vote of the remaining members of the board, conducted by secret ballot.
- h) witnesses shall be asked to affirm that their testimony is truthful and may be subject to charges of intentionally providing false information to the University, pursuant to Part 11 (f) of this Code.
- i) prospective witnesses, other than the complainant and the respondent, may be excluded from the hearing during the testimony of other witnesses. All parties, the witnesses, and the public shall be excluded during board deliberations.
- j) the burden of proof shall be upon the complainant, who must establish the guilt of the respondent by a preponderance of the evidence. "Preponderance of the evidence" is that evidence which, when fairly considered, produces the stronger impression, and has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto.

- k) formal rules of evidence shall not be applicable in disciplinary proceedings conducted pursuant to this Code. The presiding officer shall give effect to the rules of confidentiality and privilege, but shall otherwise admit all matters into evidence which reasonable persons would accept as having probative value in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded.
- l) respondents shall be accorded an opportunity to question those witnesses who testify for the complainant at the hearing.
- m) affidavits shall only be admitted into evidence if signed by the affiant and witnessed by the Director, Office of Judicial Affairs, or a designee.
- n) every statement or assertion need not be proven. Board members may take judicial notice of matters which would be within the general experience of University students and faculty members. For example, Board members may take notice that Rice Hall is located at 2121 I Street, N.W.
- o) the Director, Office of Judicial Affairs may appoint a special presiding officer in complex cases. Special presiding officers may participate in board deliberations, but shall not vote.
- p) a determination of guilt shall be followed by a supplemental proceeding in which either party may submit evidence or make statements concerning the appropriate sanction to be imposed. The past disciplinary record of the respondent will only be supplied to the board during the supplementary proceeding.
- q) any determination of guilt will be supported by written findings which will be placed in the case file and made available to the respondent.

Representatives and Advisors

- 31. Representation is not permitted in University disciplinary hearings or conferences. Respondents may be accompanied by an advisor, who may be an attorney, ONLY in the following circumstances:
 - a) the respondent is referred for a hearing; or
 - b) the respondent is assigned to a disciplinary conference AND criminal charges arising out of the same incident have been filed.

The role of advisors shall be limited to consultation with respondents; advisors may not address the Board or question witnesses.

Commentary

A limitation upon participation by counsel is a natural outgrowth of the "investigatory" administrative hearing procedure used at The George Washington University, and at most institutions of higher education. Investigatory proceedings are also used in many free societies across the world, even in criminal cases.

Unlike the passive jury in the adversarial model, the hearing panel in an investigatory proceeding assumes much of the responsibility for questioning witnesses and eliciting relevant evidence. This system gives more active control of the case to the decision maker, and diminishes the role of counsel. Properly used, it also protects the legitimate interests of the student respondent, since complainants should be subject to thorough questioning by the hearing panel members. The Supreme Court has permitted considerable leeway in the development of procedures of this nature, and held in Matthews v. Eldridge 424 U.S. 319, 348 (1976) that the traditional "judicial model is neither required, nor even the most effective method of decision-making in all circumstances...." A thoughtful law review article detailing some of the benefits of investigatory proceedings has been written by Judge Marvin F. Frankel; see "The Search For Truth: An Umpireal View" in 123 University of Pennsylvania Law Review 1031 (1975).

One of the best reasons for limiting participation by counsel in student disciplinary cases is the damage which aggressive lawyers frequently inflict on their own clients. Many of the attorneys who do appear in campus proceedings practice criminal law. They have little or no experience in informal administrative hearings. As a result, they frequently resort to the histrionics associated with jury trials and engage in excessive argumentation about "Miranda" warnings and other procedural requirements which have not been required in student conduct cases. These tactics often produce an adversarial climate which is not helpful to the accused student.

The courts have consistently held that full and active participation by counsel is not a requirement of due process in student disciplinary cases, even at public institutions of higher education; See, e.g. Henson v. Honor Committee of the University of Virginia 719 F. 2d 69 (4th Cir., 1983). It is readily appreciated that the presence of counsel in a collegial setting usually results in turning "what might have been a short conference (into) a protracted proceeding" (Friendly, "Some Kind of Hearing" 123 University of Pennsylvania Law Review 1267, 1975). The University wishes to avoid the unnecessary formalism and contentiousness frequently associated with such proceedings, and has devised alternate policies designed to give students substantial procedural protection.

Student Groups and Organizations

32. Student groups and organizations may be charged with violations of this Code.
33. A student group or organization and its officers may be held collectively and individually responsible when violations of this Code by those associated with the group or organization have received the consent or encouragement of the group or organization or of the group's or organization's leaders or officers.

Commentary

A position of leadership in a student group or organization entails responsibility. Student officers cannot knowingly permit, condone or acquiesce in any violation of this Code by the group or organization. For example, officers of a campus club who organize or supervise an activity such as a "scavenger hunt" must take reasonable precautions before, during, and after the event to prevent the misappropriation of property belonging to others. Failure to do so may result in a finding that the officers consented to any act of theft that may have occurred.

This part of the Code is also designed to hold a group or organization and its officers accountable for any act of hazing. For example, requiring, expecting, or encouraging a "pledge" to consume any drug (including alcohol) as a condition or prelude to membership, or further participation in the organization, would constitute a violation of Part 11 (a) and (d). This is so because such an activity may cause "apprehension of harm" from the standpoint of a reasonable observer, and constitutes an interference with normal University activities. The express or implied "consent" of the victim or participant is not a defense.

34. The officers or leaders or any identifiable spokesman for a student group or organization may be directed by the Vice President for Student Affairs or a designee to take appropriate action designed to prevent or end violations of this Code by the group or organization. Failure to make reasonable efforts to comply with the Vice President's directive shall be considered a violation of Part 11 (n) of this Code, both by the officers, leaders or spokesmen for the group or organization and by the group or organization itself.
35. Sanctions for group or organization misconduct may include revocation or denial of registration, as well as other appropriate sanctions, pursuant to Part 12 (g) of this Code.

Appeals

36. Any disciplinary determination resulting in expulsion or suspension from the University may be appealed by the respondent to the Committee on the Judicial System.
37. Requests for appeals must be submitted in writing to the Office of Judicial Affairs within five business days from the date of the letter notifying the respondent of the original decision. Failure to appeal within the allotted time will render the original decision final and conclusive.
38. A written brief in support of the appeal must be submitted to the Office of Student Conduct within seven business days from the date of the letter notifying the respondent of the original decision. Failure to submit a written brief within the allotted time will render the original decision final and conclusive.
39. Appeals shall be decided upon the record of the original proceeding and upon the written briefs submitted by the parties. New hearings shall not be conducted on appeal.
40. The Committee on the Judicial System may:
 - a) affirm the finding and the sanction imposed by the original board.
 - b) affirm the finding and reduce the sanction, in accordance with Parts 41 and 41 (a) of this Code.
 - c) remand the case to the original board, in accordance with Parts 41 and 41 (b).
 - d) dismiss the case, in accordance with Parts 41 and 41 (c).
41. Deference shall be given to the determination of lower boards:
 - a) sanctions may only be reduced if found to be grossly disproportionate to the offense.
 - b) cases may be remanded to the original board if specified procedural errors or errors in interpretation of University regulations were so substantial as to effectively deny the respondent a fair hearing, or if new and significant evidence became available which could not have been discovered by a properly diligent respondent before or during the original hearing.
 - c) cases may be dismissed only if the finding is held to be unsupported by any evidence.

42. The imposition of sanctions will be deferred during the pendency of appellate proceedings, unless in the discretion of the Vice President for Student Affairs, the continued presence of the student on the campus poses a substantial threat to himself or to others or to the stability and continuance of normal University functions.

Transcript Notations

43. A temporary encumbrance may be placed on a student's University records while disciplinary proceedings are pending.
44. Permanent notation of disciplinary action will be made on the transcript whenever a student is expelled. Transcript notations of disciplinary action will also be made if a suspension is implemented, although students may petition for removal of the notation when the suspension period has expired. Such a petition may be granted in the discretion of the Vice President for Student Affairs, or a designee. Factors to be considered in reviewing petitions for notation removal after suspension include the present demeanor of the student, the student's conduct subsequent to the violation, and the nature of the violation, including the severity of any resulting damage, injury or harm.

Disciplinary Files and Records

45. Case referrals may result in the development of a disciplinary file in the name of the respondent, which shall be voided if the respondent is found innocent of the charges. Voided files will be so marked, shall not be kept with active disciplinary records, and shall not leave any student with a disciplinary record.
46. The files of respondents found guilty of any charges against them will be retained as a disciplinary record for three years from the date of the letter providing notice of final disciplinary action. Disciplinary records may be reported to third parties, in accordance with University regulations.
47. Disciplinary records may be voided by the Director, Office of Judicial Affairs for good cause, upon written petition of respondents. Factors to be considered in review of such petitions shall include:
- a) the present demeanor of the respondent.
 - b) the conduct of the respondent subsequent to the violation.
 - c) the nature of the violation and the severity of any damage, injury, or harm resulting from it.

Committee On The Judicial System

48. The Committee on the Judicial System shall be composed of the following members:

- a) three faculty to be appointed by the Faculty Senate;
- b) three administrators, to be appointed by the Vice President for Student Affairs; and
- c) three students, to be appointed by the President of the Student Association.

In addition to hearing appeals under Part 36, the Committee on the Judicial System shall be responsible for reviewing this Code and suggesting appropriate amendments or modifications. Any amendments or modifications which the Vice President for Student Affairs may wish to implement shall be submitted to the Faculty Senate for its consent. Other tasks or assignments may also be referred to the Committee on the Judicial System, in the discretion of the Vice President for Student Affairs.